

No. 10739

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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SPRECKELS-ROSEKRANS INVESTMENT  
COMPANY, a Corporation,

Appellant,

vs.

JOHN V. LEWIS, former Collector of Internal  
Revenue, of the United States for the First  
District of California,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

FILED

MAY 25 1944

PAUL P. O'BRIEN,

CLERK



No. 10739

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Circuit Court of Appeals

For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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United States Attorney

ESTHER B. PHILLIPS

Assistant United States Attorney  
Post Office Building  
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San Francisco, California

Attorneys for Defendant and Appellee.

In the United States District Court for the Northern District of California, Southern Division

No. 22309W

SPRECKELS - ROSEKRANS INVESTMENT  
COMPANY, a corporation,

Plaintiff,

vs.

JOHN V. LEWIS, former Collector of Internal  
Revenue of the United States for the First District of California.

Defendant.

COMPLAINT TO RECOVER INCOME TAXES  
ILLEGALLY COLLECTED

Plaintiff complains of defendant, and for cause of action alleges: [1\*]

I.

Plaintiff is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Nevada and duly licensed and authorized to do business in the State of California; that at all of said times and at the date of the filing of this complaint, plaintiff had its principal place of business and resided at No. 2 Pine Street, in the City and County of San Francisco, State of California, and in the Southern Division of the Northern District of California.

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\*Page numbering appearing at foot of page of original certified Transcript of Record.



## II.

Defendant, John V. Lewis, was at all times from July 5, 1933, to March 6, 1938, inclusive, the duly appointed, qualified and acting Collector of Internal Revenue of the United States for the First District of California.

## III.

This is an action for the recovery of income taxes erroneously and illegally collected under the Revenue Act of 1936, Act of June 22, 1936, c. 690, 49 Stat. 1648-1756.

## IV.

Heretofore and on March 15, 1937, plaintiff filed with defendant as Collector of Internal Revenue of the United States for the First District of California, its income tax return for the calendar year 1936, upon the form furnished by the Commissioner of Internal Revenue of the United States for that purpose. Said return showed an income tax due from plaintiff for said calendar year 1936 in the amount of \$18,724.38, which amount plaintiff paid to defendant as Collector of Internal Revenue of the United States for the First District of California in installments as follows: On March 15, 1937, the sum of [2] \$4,681.11; on June 15, 1937, the sum of \$4,681.11; on September 9, 1937, the sum of \$4,681.10 and on December 23, 1937, the sum of \$4,681.06.

## V.

In the income tax return filed by plaintiff with defendant as alleged in paragraph IV hereof, plaintiff reported net taxable income in the amount

of \$87,145.81. Included in said net taxable income were gains from sales of capital assets, as defined in the Revenue Act of 1936, in the amount of \$34,250.70. Said amount of \$87,145.81 was the correct net income of plaintiff for said year 1936 for the computation of corporate income tax as required by said Revenue Act of 1936, except that plaintiff failed to deduct therefrom before computing said taxes, a loss sustained by plaintiff from the sale in said year of 300 shares of the capital stock of Chase National Bank, arising from the transactions hereinafter set out.

## VI.

On March 3, 1930, plaintiff purchased 100 units, each unit consisting of one share of the capital stock of Chase National Bank and one share of the capital stock of Chase Securities Corporation for the sum of \$17,050.00. On April 8, 1930, plaintiff purchased 100 units, each unit consisting of one share of Chase National Bank stock and one share of Chase Securities Corporation stock, for the sum of \$16,546.25. On April 24, 1930, plaintiff purchased 100 units, each unit consisting of one share of Chase National Bank stock and one share of Chase Securities Corporation stock, for the sum of \$17,100.00, or a total of 300 units at a cost of \$50,696.25. At the time of the purchase of said units the shares of Chase National Bank and Chase Securities Corporation were not separately transferable; [3]

thereafter on June 14, 1934, said stock was reissued in separate certificates, plaintiff receiving new certificates for 300 shares of Chase National Bank stock and new certificates for 30 shares of Chase Securities Corporation stock, the name of said Chase Securities Corporation being changed to Amerex Holding Corporation. At the times of the purchase of said units of Chase National Bank and Chase Securities Corporation stock, as hereinabove alleged, 70% of the cost of said 300 units or \$35,487.38 was allocable to and represented the cost of said 300 shares of Chase National Bank stock, and 30% of the cost of said 300 units or \$15,208.87 was allocable to and represented the cost of the 300 shares of Chase Securities Corporation stock. On December 22, 1936, plaintiff sold said 300 shares of Chase National Bank stock for a total price of \$13,482.15. As a result of the sale of said 300 shares of Chase National Bank stock on December 22, 1936, plaintiff sustained a loss of \$22,005.23, which loss, as hereinbefore alleged, was not deducted in its income tax return filed with the defendant as hereinabove alleged.

## VII.

The correct income tax liability of plaintiff for the year 1936, after deducting the loss upon the sale of said 300 shares of Chase National Bank stock was and is the sum of \$13,353.82, and plaintiff has overpaid its said income tax for 1936 in the sum of \$5,370.56.

## VIII.

On March 13, 1940, plaintiff filed with the Collector of Internal Revenue at San Francisco, California, its claim for a refund of income taxes illegally collected from plaintiff for the calendar year 1936 in the sum of \$5,370.56, said refund claim was based on the ground that plaintiff had overpaid its [4] income taxes for said year 1936 in said sum of \$5,370.56 by reason of its failure to deduct the loss sustained upon the sale of 300 shares of Chase National Bank stock on December 22, 1936, amounting to \$22,005.23 as hereinabove alleged. A copy of said claim for refund is attached hereto marked Exhibit "A", and is hereby referred to and by such reference made a part hereof as fully as though set forth herein at length.

## IX.

On October 2, 1940, said claim for refund filed as alleged in paragraph VIII hereof was rejected and disallowed in full by the Commissioner of Internal Revenue. Notice of the rejection and disallowance of said claim for refund was mailed to plaintiff by registered mail by said Commissioner on October 2, 1940.

## X.

No part of the amount claimed by plaintiff as a refund of income tax as alleged in paragraph VIII has been repaid, nor has the same been credited upon plaintiff's liability for income tax, and that the whole thereof, together with interest thereon as allowed by law, is wholly due and owing from defendant to plaintiff and unpaid.

Wherefore, plaintiff prays judgment against the defendant for the sum of Five Thousand Three Hundred Seventy and 56/100 (\$5,370.56) Dollars, together with interest thereon as provided by law, and for plaintiff's costs of suit herein.

WALTER SLACK,

Attorney for Plaintiff. [5]

State of California,

City and County of San Francisco—ss.

John N. Rosekrans, being duly sworn, deposes and says: That he is an officer, to wit: the Vice President of Spreckels-Rosekrans Investment Company, a corporation, the plaintiff named in the foregoing Complaint to Recover Income Taxes Illegally Collected, and as such is duly authorized to and does make this verification in its behalf; that he has read said Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

JOHN N. ROSEKRANS.

Subscribed and sworn to before me this 16th day of September, 1942.

[Seal]

MARION CURTIS,

Notary Public in and for the City and County of  
San Francisco, State of California.

My commission expires: Aug. 12, 1945.

[Endorsed]: Filed Sept. 17, 1942. [6]

[Title of District Court and Cause.]

### ANSWER

Now comes the defendant above named and answers the complaint on file herein as follows:

#### I.

Defendant admits the allegations of Paragraphs I and II of the complaint.

#### II.

Answering the allegations of Paragraph III, defendant denies that the taxes were erroneously or illegally collected.

#### III.

Defendant admits the allegations of Paragraph IV of the complaint. [7]

#### IV.

Answering the allegations of Paragraph V of the complaint, defendant denies that plaintiff sustained a loss during the year 1936 from the sale during said year of 300 shares of the capital stock of Chase National Bank. Defendant denies that plaintiff erred in failing to deduct from its income tax as reported in its return the amount of the alleged loss in the sale of said capital stock. Saving for these denials, defendant admits the allegations of Paragraph V.

#### V.

Answering the allegations of Paragraph VI of the complaint, defendant denies the allegation that at the time of the purchase of said units of Chase



National Bank and Chase Securities Corporation, 70% of the cost of said units was allocable to and was representative of the cost of the shares of Chase National Bank, and denies the allegation that 30% of the cost of said units was allocable to and was representative of the cost of said shares of Chase Securities Corporation stock. Denies the allegation that upon the sale of 300 shares of Chase National Bank on December 22, 1936, plaintiff sustained a loss of \$22,005.23. Saving for these denials defendant admits the allegations of Paragraph VI.

#### VI.

Defendant denies the allegations of Paragraph VII of the complaint.

#### VII.

Answering the allegations of Paragraph VIII, defendant denies that the taxes referred to in said paragraph were illegally collected. Admits that a true copy of plaintiff's claim for refund is attached to the complaint as Exhibit "A". Defendant denies that said claim for refund was just or that [8] the basis relied on in said claim for refund was correct. Defendant admits the remaining allegations of Paragraph VIII.

#### VIII.

Defendant admits the allegations of Paragraph IX of the complaint.

#### IX.

Answering the allegations of Paragraph X of the complaint defendant denies that any part of

said claim for refund is due or owing from defendant to plaintiff, or otherwise. Admits that no part of said claim has been paid by the defendant or by any one in his behalf.

Wherefore defendant prays for judgment in his favor, for his costs and for such other relief as may be just.

FRANK J. HENNESSY,  
United States Attorney.  
ESTHER B. PHILLIPS,  
Assistant United States At-  
torney.

(Receipt of Service.)

[Endorsed]: Filed Nov. 19, 1942. [9]

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[Title of District Court and Cause.]

### STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto by their respective counsel that the following facts may be taken to be true for the purpose of the above-entitled proceedings without prejudice to the right of either party to introduce other or further evidence at the hearing not inconsistent therewith.

#### I.

That plaintiff is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Nevada and duly



licensed and authorized to do business in the State of California; that at all of said times and at the date of the filing of this complaint, plaintiff had its principal place of business and resided at No. 2 Pine Street, in the City and County of San Francisco, State of California, and in the Southern Division of the Northern District of California. [10]

## II.

That defendant, John V. Lewis, was at all times from July 5, 1933 to March 6, 1938, inclusive, the duly appointed, qualified and acting Collector of Internal Revenue of the United States for the First District of California.

## III.

That this is an action for the recovery of income taxes collected from the plaintiff under the Revenue Act of 1936, Act of June 22, 1936, c. 690, 49 Stat. 1648-1756.

## IV.

That heretofore and on March 15, 1937, plaintiff filed with defendant as Collector of Internal Revenue of the United States for the First District of California, its income tax return for the calendar year 1936, a copy of said return is attached hereto, made a part hereof and is marked Exhibit A. Said return showed an income tax due from plaintiff for said calendar year 1936 in the amount of \$18,-724.38, which amount plaintiff paid to defendant as Collector of Internal Revenue of the United States for the First District of California in installments as follows: On March 15, 1937, the sum

of \$4,681.11; on June 15, 1937, the sum of \$4,681.11; on September 9 1937, the sum of \$4,681.10 and on December 23, 1937, the sum of \$4,681.06.

## V.

That said income tax return, referred to in paragraph IV hereof, showed a net taxable income in the amount of \$87,145.81. In arriving at said sum of \$87,145.81 plaintiff did not take as a deduction any part of the sum of \$22,005.23, which plaintiff claims but defendant denies is the deductible loss resulting from the sale of 300 shares of the capital stock of the Chase National Bank. [11]

## VI.

That the said Chase National Bank was incorporated in 1877 under the laws of the state of New York. In 1917 the Chase Securities Corporation was incorporated under the laws of the state of New York. The said Chase Securities Corporation was formed to deal in certain securities in which the said Chase National Bank, was forbidden by law to deal.

## VII.

Pursuant to an agreement dated March 21, 1917 (Exhibit B) a special dividend of \$2,500,000 was declared by the said The Chase National Bank of the city of New York and by appropriate action the said money was transferred to the said Chase Securities Corporation in return for the issuance of all of its capital stock pro rata to the stockholders of the said The Chase National Bank of the city of New York; and the stockholders of

the Chase National Bank of the city of New York and the Chase Securities Corporation deposited their shares of stock of each corporation with the Bankers Trust Company and received in exchange therefor deposit receipts which in each case covered the same number of shares of the Chase National Bank of the city of New York and of Chase Securities Corporation. In due course, pursuant to the said agreement the holders of the aforesaid deposit receipts surrendered the same and received certificates of stock of the Chase National Bank of the city of New York and of the Chase Securities Corporation, on opposite sides of one paper as per form (Exhibit C) submitted herewith and made a part hereof. The said agreement provided for its modification, amendment or termination "at any time and from time to time, by the vote of the registered holders of at least seventy-five per cent. (75%) of the number of shares of the Bank of the Securities Company." On January 15, 1930, the said agreement of March 21, 1917 was amended by the vote of the registered holders of at least seventy-five per cent. (75%) of the number [12] of shares of the Bank and Securities Company, so as to permit the further amendment or termination thereof by the vote of the registered holders of sixty-six and two-thirds per cent. (66⅔%) of the number of shares of the Bank and of the Securities Company, instead of seventy-five per cent. (75%) as originally.

See Exhibit F, which is attached hereto and made a part of this stipulation.

## VIII.

That under the said agreement of March 21, 1917 (Exhibit B) and until June 14, 1934, the stock of the said Chase National Bank and the stock of the said Chase Securities Corporation could not be purchased or sold separately, but could be sold only in units consisting of one share of the stock of said Chase National Bank and one share of the stock of the said Chase Securities Corporation. Neither the stock of the said Chase Securities Corporation nor the stock of the said Chase National Bank was prior to June 14, 1934 quoted on the market or sold separately. The quotations on the market with respect to stock interests in these corporations was in terms of a share of stock of the Chase National Bank of New York. The bid for such a share of Chase National Bank of New York constituted the price bid, asked or paid for a unit of stock consisting of one share of said Chase National Bank stock and one share of said Chase Securities Corporation (later called Chase Corporation) stock. The bid and asked price of the said units of stock representing the interests in said Chase National Bank stock and said Chase Securities Corporation stock during the month of June 1934 were as follows:

Date 1934	No. of Shares Sold	Open	High	Low	Close	Bid	Asked
June 1						27	281½
2						27	281½
3	Sunday						
4						271¼	283¼
5						281¼	293¼
6						283¼	301¼

Date	No. of						
1934	Shares Sold	Open	High	Low	Close	Bid	Asked
7						28 $\frac{1}{2}$	30
8						29	30 $\frac{1}{2}$
9						29 $\frac{1}{4}$	30 $\frac{3}{4}$
10	Sunday						
11						28 $\frac{3}{4}$	30 $\frac{1}{4}$
							[13]
12						29	30 $\frac{1}{2}$
13						28 $\frac{3}{4}$	30 $\frac{1}{4}$

The above statistics are taken from the Bank Stock Market, New York, for the month of June 1934 as shown by the Wall Street Journal.

The bid and asked prices of Chase National Bank of New York, Common Stock for the month of June 1934 were as follows:

Date	No. of						
1934	Shares Sold	Open	High	Low	Close	Bid	Asked
June 14						x 27 $\frac{1}{2}$	29
15	(new)					27 $\frac{3}{4}$	29 $\frac{1}{4}$
16						27 $\frac{3}{4}$	29 $\frac{1}{4}$
17	(Sunday)						
18						27 $\frac{1}{2}$	29
19						26 $\frac{3}{4}$	28 $\frac{1}{4}$
20						26 $\frac{1}{2}$	28
21						26 $\frac{1}{4}$	27 $\frac{3}{4}$
22						26	27 $\frac{1}{2}$
23						26 $\frac{1}{4}$	27 $\frac{3}{4}$
24	(Sunday)						
25						26	27 $\frac{1}{2}$
26						26	27 $\frac{1}{2}$
27						26 $\frac{1}{4}$	27 $\frac{3}{4}$
28						26 $\frac{1}{2}$	28
29						26 $\frac{1}{4}$	27 $\frac{3}{4}$
30						26	27 $\frac{1}{2}$

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x Without Amerex Corporation formerly Chase Corporation. The above quotations are taken from the Bank Stock Market as shown by the Wall Street Journal.

## IX.

That the bid and asked prices of Amerex Holding Company capital stock in the Over-the-Counter Market as shown by the National Stock Summary (April 10, 1934 to October 10, 1934, page 65) is as follows:

Name of Broker	Date	Bid	Asked
Julius Stern & Co., N. Y.	6/15/34	100 @ 13½	100 @ 14¼ E
W. F. Thompson & Co., N. Y.	6/15/34	200 @ 13½	200 @ 14¼ E
Greene & Co., N. Y.	6/16/34	100 @ 13¾	100 @ 14¼ E
G. L. Chrtsrom & Co., Inc., N. Y.	(6/21/34)	@ 14	@ 14 E
Hewitt & Co., N. Y.	6/27/34	100 @ 14¾	100 @ 15⅛ E

Key—E, National Daily Quotation Service—Eastern Sheets.

## X.

That by a certain agreement dated June 14, 1934, copy of which is submitted herewith and marked Exhibit D, as a consequence [14] of the passage of the Federal Banking Act of 1933, requiring the separation of National Banks and their affiliates, the aforementioned agreement of March 21, 1917, as amended, (see Exhibit B) was terminated. As a part of the said agreement of June 14, 1934, the certificate of incorporation of the Chase Securities Corporation was changed by eliminating therefrom all provisions preventing separate sale, pledge or other disposition or transfer of a share or shares of stock thereof or interest therein, without transfer to the same transferee of a like interest in an equal number of shares of the said Chase National Bank of the city of New York. Also on June 14, 1934, the number of shares of the Chase Corporation stock



was reduced so that each 10 shares of stock of said corporation then issued and outstanding became only one share of the stock of the said corporation. On the same date, June 14, 1934, the name of said Chase Corporation was changed to Amerex Holding Corporation. On and after June 15, 1934, but not prior thereto, the stock of the said Amerex Corporation was quoted separately from the stock of said Chase National Bank stock.

## XI.

That the 300 shares of the capital stock of the Chase National Bank referred to in paragraph V above was acquired by plaintiff as follows: On March 3, 1930, plaintiff purchased 100 units, each unit consisting of one share of the capital stock of Chase National Bank and one share of the capital stock of Chase Securities Corporation, for the sum of \$17,050.00. On April 8, 1930, plaintiff purchased 100 units, each unit consisting of one share of Chase National Bank stock and one share of Chase Securities Corporation stock, for the sum of \$16,546.25. On April 24, 1930, plaintiff purchased 100 units, each unit consisting of one share of Chase National Bank stock and one share of Chase Securities Corporation stock, for the sum of \$17,100.00, or a total of 300 units at a cost of \$50,696.25. As evidence of said purchase, plaintiff received a certificate or certificates representing the [15] said 300 units, which in each case consisted of one paper upon the face or one side of which was set forth an executed certificate for the stock of the Chase National Bank

of the City of New York, together with a subjoined legend with reference to the provisions of a certain agreement of March 21, 1917 as amended and upon the back or other side of which was set forth and executed a certificate for the stock of Chase Securities Corporation, together with a legend stamped thereon with reference to the provisions of said agreement of March 21, 1917 as amended. A true copy of a specimen form for said certificate and legends stamped thereon is submitted herewith and marked Exhibit C. True copy of said agreement of March 21, 1917 and of the amendment thereto is submitted herewith and marked Exhibit B. On December 22, 1936, plaintiff sold the said 300 shares of Chase National Bank stock for a total price of \$13,482.15.



This is to Certify that

is the owner of Twenty Dollars each of the Capital Stock of The Chase National Bank of the City of New York, transferable only in the books of the Bank by the holder to any person or by duly authorized Officers, upon the surrender of this Certificate properly endorsed

When the pursuant used of the Bank and the signatures of its duly authorized officers

THE AGREEMENT OF MARCH 21, 1917, AS AMENDED BETWEEN ALL THE SHAREHOLDERS OF THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK AND CHASE SECURITIES CORPORATION, TO WHICH THE ABOVE-ENTITLED CERTIFICATE IS ISSUED, AND THE CHASE SECURITIES CORPORATION, AS INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK, PROVIDES THAT NO SHAREHOLDER OF EITHER CORPORATION WILL SELL, PLEDGE OR OTHERWISE DISPOSE OF OR TRANSFER, WHETHER VOLUNTARILY, BY OPERATION OF LAW OR OTHERWISE, ANY SHARE OR INTEREST THEREIN IN EITHER CORPORATION WITHOUT AT THE SAME TIME TRANSFERRING TO OR VESTING IN THE SAME PARTY AN EQUAL NUMBER OF SHARES, OR THE SAME INTEREST THEREIN, IN THE OTHER. ALSO THAT SUCH SHAREHOLDER WILL NOT TRANSFER ANY OF SUCH SHARES, OR ANY INTEREST THEREIN, TO ANY OTHER PERSON OR ENTITY UNLESS THE SAME IS DONE IN CONNECTION WITH THE INCORPORATION OF CHASE SECURITIES CORPORATION AND AS STATED IN THE STOCK CERTIFICATE OF THAT CORPORATION ON THE REVERSE SIDE HEREOF

SPECIMEN

SPECIMEN

INSTRUMENT LAMINATED

No. 22309-a  
 Exhibit No. 9  
 Filed June 30, 1943  
 Walter B. Mallory, Clerk  
 J. B. Schaeffer







## XII.

That on March 13, 1940, plaintiff filed with the Collector of Internal Revenue at San Francisco, California, its claim for a refund of income taxes collected from plaintiff for the calendar year 1936 in the sum of \$5,370.56, said refund claim was based on the ground that plaintiff had overpaid its income taxes for said year 1936 in said sum of \$5,370.56 by reason of its failure to deduct the loss now claimed in this action to have been sustained upon the sale of 300 shares of Chase National Bank stock on December 22, 1936, amounting to \$22,005.23 (as hereinabove recited). A copy of said claim for refund is attached hereto marked Exhibit E, and is hereby referred to and by such reference made a part hereof as fully as though set forth herein at length.

## PLAINTIFF'S EXHIBIT E

United States (Cut) of America  
Treasury Department  
Washington

December 4, 1942.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of Claim for Refund of \$5,370.56 Corporation Income Tax for 1936, (with statement and schedules attached) filed by Spreckels-Rosekrans Investment Company, San Francisco, California, on file in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[Seal]

A. H. MARKS

F. A. Birgfeld

Actg. Chief Clerk, Treasury  
Department.

Treasury Department Stock Form 2247

[In Longhand]: WWB wwB HSF SSF JPW H24

Free

Form 843

Treasury Department

Internal Revenue service

Revised June 1930

CLAIM

To be Filed with the Collector where Assessment  
was made or tax paid

[In pencil]: 1938—Jan—530002

[In pencil]: 1937—401908

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reserve side.

[Stamp]: 8574822	[ X ]	Refund of Tax Illegally Collected	Collector's Stamp (Date received)
	[ ]	Refund of Amount Paid for Stamps Unused, or Used in Error or Ex- cess.	Received Mar 13 1940
	[ ]	Abatement of Tax Assessed (not applicable to estate or income taxes)	Collector of Int. Rev., First Dist. Calif.

State of California  
City and County of San Francisco—ss.

[Stamp] :  
Received  
Apr 24 1940  
Claims Control  
Section

Type Name of taxpayer or  
purchaser of stamps:

✓

Spreckels-Rosekrans Investment Company

or Business address: 2 Pine Street, San Francisco,  
(Street) (City)

Print California  
(State)

Residence.....

Te deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete.

1. District in which return (if any) was filed: San Francisco, California. [In pencil]: 1st ✓ ✓
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1936, to Dec. 31, 1936.
3. Character of assessment or tax: Corporation Income Tax.
4. Amount of assessment \$18,724.38; dates of payment Mar. 15, June 15, Sept. 15, Dec. 23, 1937.
5. Date stamps were purchased from the Government.....
6. Amount to be refunded..... \$5,370.56 ✓
7. Amount to be abated (not applicable to income or estate taxes) ..... \$.....
8. The time within which this claim may be legally filed expires, under Section 322 (b) of the Revenue Act of 1936, on March 15, 1940.



The deponent verily believes that this claim should be allowed for the following reasons:

See Schedule attached

[Stamp]: Revenue Agent in Charge      Received May 29,  
1940      San Francisco.

(Attach letter-size sheets if space is not sufficient)

SPRECKELS-ROSEKRANS INV. CO.

Signed      JOHN N. ROSEKRANS,  
                                 V. Pres.

Sworn to and subscribed before me this 12th day of March,  
1940.

[Seal]

MARION CURTIS

(Signature of officer administering oath)

Notary Public in and for the City and County of San Francisco,  
State of California.

(Title)

My Commission Expires June 27, 1941.



[In pencil] : M

CERTIFICATE

[In pencil] : G PM 9-20-40 CER

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax :

Character of assessment and period covered	List	Year	Month	Account No. or Page Line	Amount assessed	Paid, Abated, or Credited Date	Pd. Ab. Cr.	Pd.
	1937	1936		401908	\$18,724.38	3/15/37		\$4,681.11
						6/15/37		4,681.08
						9/18/37		4,681.10
						12/27/37		4,681.09
	1938	1936	Jan.	530002	6.16	12/27/37		6.16
Totals,					\$18730.54	Total,	\$18,730.54	

I certify that the records of this office show the following facts as to the purchase of stamps :

To Whom Sold or Issued	Kind	Number	Denomination	Date of sale or issue	Amount	If special tax stamp, state :	
						Serial number	Period commencing—
[Stamp] : Rejected						26374	

CLIFFORD C. ANGLIM  
Collector of Internal Revenue  
First California  
(District)

By J. P. ROESMAN, Dep. Col.  
Committee on Claims

## Certificate—(Continued)

Claim examined by—

Amount claimed.... \$.....

Claim approved by—

Amount allowed.... \$.....

Chief of Division.

Amount rejected.... \$.....

## INSTRUCTIONS

1. The claim must be set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.
2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.
3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return, and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.
4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

Spreckels-Rosekrans Investment Company purchased for investment unit certificates representing 300 shares of Chase National Bank stock and 300 shares of Chase Securities Corporation stock on the dates and at the prices listed below:

March 3, 1930	100 units	\$17,050.00
April 8, 1930	100 "	16,546.25
" 24, 1930	100 "	17,100.00
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Total	300 "	\$50,696.25

[Stamp]: Received Mar 13 1940 Collector of Int. Rev.  
First Dist. Calif.

The shares of the two corporations were not at the time separately transferable.

On June 14, 1934, Chase National Bank and its securities affiliate Chase Securities Corporation were divorced as required by law, and separate certificates were issued to the holders of the unit certificates for their equity in Chase Securities Corporation. The latter corporation was at the same time renamed Amerex Holding Corporation. Each unit certificate holder received one share of Amerex Holding Corporation stock for each ten units held. Spreckels-Rosekrans Investment Company as the holder of 300 units received 30 shares of Amerex Holding Corporation stock.

On December 22, 1936, Spreckels-Rosekrans Investment Company sold its 300 shares of Chase National Bank stock for a total price of \$13,482.15. Subsequent to such sale but before filing its Federal Income Tax return for the calendar year 1936, the attention of the officers of tax payer was directed to

a ruling of the Commissioner of Internal Revenue relating to the tax status of this stock, as reported by the president of Amerex Holding Corporation in a letter to stockholders dated October 5, 1934. This reported ruling was in part as follows:

“In case only the shares of the Bank are sold and the shares of this corporation (Amerex) are retained, or in case the shares of this corporation are sold and the shares of the Bank are retained:

If the proceeds exceed the cost of the unit, the excess is profit, and the cost of the shares retained is zero; when the shares retained are subsequently sold, the net proceeds are profit; If the proceeds do not exceed the cost of the units no profit is realized and no loss is sustained, and the cost of the shares retained is the cost of the unit reduced by the proceeds of the shares sold; when the shares retained are subsequently sold, if the proceeds exceed the reduced cost, the excess is profit and if the proceeds are less than the reduced cost, the difference is loss.”

While not admitting the validity of this ruling the officers of this corporation decided that the 1936 corporation Income Tax return should be prepared in conformity therewith, and inasmuch as the 30 shares of Amerex stock had not been sold, no loss was claimed on the sale of the Chase Bank stock. Changes in tax law introduced by the Revenue Act of 1937 made such treatment exceedingly unfavorable to this corporation.

This taxpayer contends that it is appropriate and feasible to make a fair allocation of the cost of the Chase Bank units between the Chase National Bank stock which was sold and the Amerex Holding Corporation stock which was retained. In support of this contention taxpayer relies upon the decision of the Board of Tax Appeals in *Stanley Hagerman v. Commissioner*, (34 BTA 1158) affirmed by the Third Circuit Court of Appeals, (102 Fed 2nd 281) in which the taxpayer was permitted to make an allocation of cost between the stock of a bank and that of its securities affiliate on the basis of net asset values of each company at the date units were purchased.

There is submitted herewith, (schedule #1), a comparative statement of the reported earnings of the Chase National Bank and Chase Securities Corporation, by years, for the six years 1924 to 1929 inclusive, with the calculated percentage of the earnings of each company to the total earnings of both companies. It will be seen that for the entire six year period the percentages of earnings are as follows:

Chase National Bank .....	70.110%
Chase Securities Corporation .....	29.890%

There is also submitted, (schedule #2), a comparison of the Net Worth, at December 31, 1929, of the Bank with that of the Securities Company, as reported by those companies. This percentage is as follows:

Chase National Bank .....	70.455%
Chase Securities Corporation .....	29.545%

Since there was no change in the capital structure of either Bank or Securities Company from December 31, 1929, to the dates on which taxpayer purchased the stock units, it may be assumed that the relative values of the two stocks remained substantially the same during the interval.

The taxpayer feels justified in allocating the cost to it of the unit certificates between the shares of stock of the two companies, on the basis of such computed relative percentages of earnings and net worth. Accordingly the following allocation of cost is claimed:

Cost of 300 units, consisting of 300 shares of Chase National Bank stock and 300 shares of Chase Securities Corporation stock.....	\$50,696.25
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Cost allocated to 300 shares Chase National Bank stock (70%) .....	\$35,487.38
Cost allocated to 30 shares of Amerex Hold- ing Corporation stock (30%).....	\$15,208.87

If a cost of \$35,487.38 is allocated to the 300 shares of Chase National Bank stock sold by the taxpayer in the year 1936, a Capital Loss of \$22,005.23 would result from such sale, and taxpayers Net Income for the year 1936 would be reduced from \$87,145.81, as reported, to \$65,140.58.

Taxpayer accordingly requests the Commissioner to re-determine its income tax for the year 1936, and to cause the over-payment of tax, amounting to \$5,370.56 (as computed on schedule #3, attached hereto) to be refunded.



Schedule #1

SPRECKELS-ROSEKRANS INVESTMENT COMPANY  
#2 Pine St., San Francisco, Calif.

Year 1936

Chase Securities Corporation

Comparative Earnings by Years  
1924 to 1929 Inclusive

	Bank		Securities Corporation	
	Amount	% of Total	Amount	% of Total
1924	\$ 49,546.84	75.037	\$ 16,743.29	24.963
1925	49,164.74	63.300	28,504.21	36.700
1926	60,264.30	62.261	36,528.24	37.739
1927	80,703.75	69.897	34,757.08	30.103
1928	95,235.96	67.181	46,524.98	32.819
1929	183,041.71	76.013	57,760.83	23.987
	<u>\$517,957.30</u>	<u>70.110</u>	<u>\$220,818.63</u>	<u>29.890</u>

Schedule #2

SPRECKELS-ROSEKRANS INVESTMENT COMPANY  
#2 Pine St., San Francisco, Calif.

Year 1936

Chase National Bank & Chase Securities Corporation

Comparison of Net Worth at December 31, 1929

Chase National Bank

Capital .....	\$105,000,000.
Surplus .....	105,000,000.
Undivided profits .....	31,364,145.

\$241,364,145. 70.455%

## Chase Securities Corporation

Capital stock .....\$ 73,000,000.

Surplus and undivided profits 28,216,620.

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\$101,216,620.

29.545%

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100.000%

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## Schedule #3

## SPRECKELS-ROSEKRANS INVESTMENT COMPANY

#2 Pine St., San Francisco, Calif.

Year 1936

Computation of Federal Income Tax, Year 1936,  
on Net Income as Adjusted

## Normal Tax

Net income for income tax computation per

return .....\$87,145.81

Deduct:

Loss on sale of 300 shs. Chase National

Bank stock ..... 22,005.23

Net income for income tax computation

(adjusted) .....\$65,140.58

Less: Dividends received credit (85% of

item 12a) ..... 76,771.99

Normal tax net income .....(loss) \$11,631.41

Total Normal Tax .....

None

## Surtax on Undistributed Profits

Net income for surtax computation, per

return .....\$87,145.81

Deduct:

Loss on sale of 300 shs. Chase National

Bank stock ..... 22,005.23

Net income for surtax computation (ad-

justed) .....\$65,140.58



Less: Normal tax, etc. ....	None
Adjusted Net Income (item 28).....	\$65,140.58
Less: Dividends paid credit, etc.....	None
Undistributed net income (item 33).....	\$65,140.58

	Rate		
Tax on portion of item 33, not in excess of 10% of item 28.....	\$ 6,514.05	7%	\$ 455.98
Tax on portion of item 33, in excess of 10% and not in excess of 20% of item 28 .....	6,514.06	12%	781.69
Tax on portion of item 33, in excess of 20% and not in excess of 40% of item 28 .....	13,028.12	17%	2,214.78
Tax on portion of item 33, in excess of 40% and not in excess of 60% of item 28 .....	13,028.12	22%	2,866.19
Tax on portion of item 33, in excess of 60% of item 28.....	26,056.23	27%	7,035.18
Total Surtax .....	\$13,353.82		
Total Normal Tax and Surtax.....	\$13,353.82		
Income Tax Assessed and Paid.....	\$18,724.38		
Amount of Refund Claimed .....	\$5,370.56		

[Endorsed]: Plaintiff's Exhibit E. Filed June 30, 1943. Walter B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

### XIII.

That on October 2, 1940, said claim for refund filed as stated in paragraph XII was rejected and disallowed in full by the Commissioner of Internal Revenue. Notice of the rejection and disallowance of said claim for refund was mailed to plaintiff by

registered mail by said Commissioner on October 2, 1940. [16]

XIV.

That no part of the amount claimed by plaintiff as a refund of income tax as stated in paragraph XII has been repaid, nor has the same been credited upon plaintiff's liability for income tax.

XV.

That in the event decision should be rendered in favor of the plaintiff the parties hereto shall compute the amount due, in accordance with the decision of the court, and the amount so arrived at will be inserted in the judgment.

Dated: June 22, 1943.

WALTER SLACK

Attorney for Plaintiff

FRANK J. HENNESSY

United States Attorney

ESTHER B. PHILLIPS

Assistant United States At-  
torney

[Endorsed]: Filed June 30, 1943. [17]

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[Title of District Court and Cause.]

Washington, D. C.

Monday, June 7, 1943

DEPOSITION OF THOMAS C. MONTGOMERY,  
taken without formal notice by mutual agreement of  
the parties, before Franklin A. Steinko, a Notary  
Public in and for the District of Columbia, in Room

4311 Department of Justice Building, Washington, D. C., beginning at 10:00 o'clock a.m., when were present:

Thomas M. Wilkins, Esq.,

Counsel for Plaintiff;

George J. Laikin, Esq.,

Counsel for Defendant.

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### PROCEEDINGS

Mr. Wilkins: The parties to this proceeding have stipulated to take the deposition of Thomas C. Montgomery in Washington, D. C. It has been informally agreed between Mr. Laikin and myself that we appear here in Mr. Laikin's office in [18] the Department of Justice to take the deposition of Mr. Montgomery on this, the 7th day of June, 1942. Without objection, therefore, I will proceed with the examination of Mr. Montgomery. That is agreeable, is it?

Mr. Laikin: It is.

Thereupon,

THOMAS C. MONTGOMERY,

a witness produced by Counsel for the Plaintiff, was duly sworn by the Notary Public and, upon examination, testified as follows:

Examination on Behalf of the Plaintiff

By Mr. Wilkins:

Q. Will you give your full name, Mr. Montgomery?  
A. Thomas C. Montgomery.

(Deposition of Thomas C. Montgomery.)

Q. And your business address?

A. Washington Building, Washington, D. C.

Q. Your age? A. Fifty-three.

Q. Your primary education?

A. High school; A.B. degree, LL.B. degree Harvard, 1914.

Q. Did you ever practice law?

A. From 1914 to 1917, in South Carolina.

Q. What experience have you had since the practice of law?

A. I was in the Army in World War I, more or less in a business job in Paris; then I went in the securities business in March, 1920. I have been in it ever since.

Q. Will you describe your experience in dealing in securities since 1920?

A. Well, I started as everyone does, as a salesman. I was with a firm in Atlanta, Georgia, at first, from 1920 to '21. [19]

Q. What is the name of that firm?

A. Securities Sales Company.

Q. And what was your position?

A. Salesman.

Q. How long were you there?

A. Not quite a year.

Q. And then where did you go?

A. To the Equitable Trust Company, New York.

Q. And what did you do there?

A. Salesman.

Q. Securities salesman?

A. Yes, securities.

(Deposition of Thomas C. Montgomery.)

Q. And then where did you go?

A. I was in Houston, Texas, for three months; I went to institute a bond department for the Guardian Trust Company of Houston.

Q. Were you employed there?

A. I was manager of the bond department.

Q. And what were those dates?

A. That was from September to December, 1921.

Q. Where did you go from there?

A. From there I went to New York and Washington. I was working on some private promotions for a few months. Then I went into the mortgage business here in Washington, and was in that for four years.

Q. What company were you with then?

A. Real Estate Mortgage and Guaranty Corporation.

Q. You say you were there four years?

A. Four years.

Q. Where did you go after you left there? [20]

A. I, with another man, formed Waggaman, Brawner & Company, to deal in investment securities generally, and I was an officer and partner in that firm from 1927 until last September.

Q. Did that firm own a seat on the Washington Stock Exchange?      A. Yes.

Q. And what is your present affiliation?

A. Last summer my partner there went into the Army and I moved down as a consequence with the firm of Ferris Exnicios & Company. We merged the two businesses. Mr. Ferris lost his

(Deposition of Thomas C. Montgomery.)

partner Exnicios and we merged the two businesses under that name.

Q. During any of that time was it your business to appraise or place a value on stocks for others?

A. Oh yes, naturally, in the course of the business.

Q. Have you had occasion to appraise the value of bank stocks during that time? A. Yes.

Q. Would you say that that formed any large percentage of your work?

A. Well, from the early part of 1930 on it did. Up to that time I hadn't been especially interested in bank stocks any more than any other class of stocks, because in the boom days they sold for such high figures that the average investor wasn't interested in a stock anywhere from two or three hundred dollars a share up.

Q. Then, from 1930 on, did you commence dealing particularly with bank stocks?

A. Yes. Since that time I have dealt in bank stocks right along. I have watched the market especially on the New York bank stocks, the leaders like Chase, National City, Manufacturers, Irving Trust, and so on. [21]

Q. How about securities companies, investment companies? Have you had experience with valuing the capital stock of that sort of property?

A. Yes. Of course in the early days the shares of securities companies were generally not publicly held. In more recent years the two that I have dealt in have been First Boston and Blair & Com-



(Deposition of Thomas C. Montgomery.)

pany, which are about the only two that are very actively traded.

Q. Have you ever been a member of any stock exchange?

A. Yes, I am a member of the Washington Stock Exchange.

Q. In the course of your business, have you ever had occasion to inquire into the value or make a study of the value of the common stock of the Chase National Bank of New York City?

A. Yes, I have.

Q. Have you ever had occasion to inquire into the value or make a study of the value of the Chase Securities Corporation?      A. Yes.

Q. Are you familiar with the values of those securities as of the early part of the year 1930?

A. Yes.

Q. Are you familiar with the details of the agreement resulting in a device between the shares of the Chase National Bank stock and the shares of the Chase Securities Corporation stock forbidding the sale of either without an equal number of shares of the other?

A. Yes. Such an agreement was made March 21, 1917, when Chase Securities was started. It was terminated June 14, 1934. Originally this agreement provided——

Mr. Laikin: Well, now, I will object to testimony as to what the agreement provided. It is in the record and it will [22] speak for itself.

(Discussion off the record.)



(Deposition of Thomas C. Montgomery.)

Mr. Wilkins: At this point, without objection from Mr. Laikin, I will read into the record a list and description for purposes of identification of certain exhibits that will be attached to a stipulation that we have about agreed to between us.

Exhibit "B" will be a copy of agreement between depositing stockholders of the Chase National Bank of the City of New York and A. Barton Hepburn, Francis L. Hine, Henry W. Cannon and Albert H. Wiggin as a committee of such stockholders, providing for the organization of Chase Securities Corporation, dated March 21, 1917. It is this agreement which limits the sale of Chase National Bank stock and Chase Securities Corporation stock.

Exhibit "C" will be a copy of a certificate of the stock of the Chase National Bank, with a copy of a certificate of Chase Securities Corporation stock printed on the opposite side of the same piece of paper.

Exhibit "D" will be an agreement dated June 14, 1934, terminating the part of the agreement dated March 21, 1917, forbidding the sale of Chase National Bank stock and Chase Securities stock separately.

By Mr. Wilkins:

Q. Mr. Montgomery, having in mind that during the period from March 21, 1917, to June 14, 1934, the common stock of the Chase National Bank of New York City was transferable only in units consisting of an equal number of shares of such stock

(Deposition of Thomas C. Montgomery.)

and shares of stock of the Chase Securities Corporation, have you an opinion concerning the value on March 3, 1930, April 8, 1930, and April 24, 1930, of the common stock of the said Chase National Bank independently of any value that might be attributable to the [23] stock of the Chase Securities Corporation?       A. Yes, I have.

Q. What, in your opinion, was such value per share of such common stock of the said Chase National Bank independently of the said Chase Securities Company stock on March 3, 1930?

Mr. Laikin: That question is objected to on the grounds that there has been no foundation laid for it. There is nothing in the record to indicate the facts or statistics by which the witness could base an opinion.

By Mr. Wilkins:

Q. Now, Mr. Montgomery, give your opinion as to the value on March 3, 1930, in accordance with the question.

A. I would say in my opinion the value of Chase stock on that day was \$127.88 per share—Chase Bank stock.

Q. Now give your opinion as to the value of such Chase National Bank stock, independently, on April 8, 1930.

Mr. Laikin: I object to this question on the same grounds as my previous objection.

By Mr. Wilkins:

Q. Will you answer the question, please?

(Deposition of Thomas C. Montgomery.)

A. On April 8, 1930, in my opinion the value of Chase Bank stock was \$124.10 a share.

Q. Now give your opinion as to the value of such Chase National Bank stock, independently, on April 24, 1930.

Mr. Laikin: Same objection.

A. In my opinion, on April 24, 1930, the value of Chase Bank stock was \$128.25 per share.

Q. In those opinions, that is the value of Chase National Bank stock in each instance independently of the Chase Securities Company stock on those days? [24]

A. Yes, sir; that is right.

Q. Will you describe briefly the method you followed in arriving at those values which you gave as your opinion?

A. On the nearest reported date to the dates of these purchases, December 31, 1929, the book value of Chase Bank and Chase Securities together was \$65.25 per share. Of that, the book value of Chase Bank alone was \$45.97. The book value of Chase Securities Company was \$19.28. In other words, the book value of the Securities Company was 31 per cent of the total book value. At the end of 1930 the book value of Chase Bank and Chase Securities taken together was \$63.02. The book value of Chase alone—Chase Bank alone—was \$48.35, and of Chase Securities was \$14.67. In other words, at the end of 1930 the book value of the Securities Company was 23 per cent of the total book value.

(Deposition of Thomas C. Montgomery.)

On dividends, to which I would give a good deal of weight, in the year 1927 the total dividends per share was \$18, of which the bank contributed \$14 and the Securities Company \$4. The same dividends were paid in 1928. In those two years the securities company was contributing approximately 22 per cent of the total income in dividends.

For the first three quarters of 1929 the total quarterly dividend was \$4.50 per share, of which the bank contributed \$3.50 and the securities company \$1.00. So, for '27, '28, and the first half of '29, the securities company contributed 22 per cent of the total income the shareholders received.

Then the stock, in July, '29, was split, five for one.

Q. What stock was that?

A. Both stocks, the Chase Bank and Chase Securities. In other words, a man who owned 100 shares before the split-up then had 500 of each.

[25]

From that time on, in the latter part of '29 up to the date of these purchases, the dividend basis was \$4 a year, of which \$3 was contributed by the bank and \$1 by the securities company.

In my judgment, an investor at that time would have been paying more attention to dividend income than he would to book value, because book value of a securities company fluctuates very violently.

Mr. Laikin: I will object to the answer and ask that it be stricken, on the ground that there is no showing that any of the information the witness is

(Deposition of Thomas C. Montgomery.)

giving was available to the ordinary investor. I will also ask to have the testimony of the witness with respect to the dividends paid by the bank and the securities company and the relative amount of each stricken, on the ground that there is no showing as to where the information and the statistics come from. There is nothing in the record on which the witness could base this testimony.

By Mr. Wilkins:

Q. Will you state for the record at this point, in connection with your answer to my last question, Mr. Montgomery, first whether or not the information that you used in connection with your study of these values came from the usual sources available to people who make the markets? A. Yes.

Mr. Laikin: I will object to the question as being indefinite and uncertain. The question is not valid unless he specifies the sources counsel has reference to.

Mr. Wilkins: It is merely a preliminary question.

By Mr. Wilkins:

Q. Now will you tell what were the sources of your [26] information?

A. The information was taken from Moody's Manual of Securities of Banks.

Q. Did you make any other investigations of information affecting your opinion?

A. I also checked the figures with Standard and Poor's.

(Deposition of Thomas C. Montgomery.)

Q. Did you have any other services from which you might have checked these figures?

A. There were others, but those are the two principal ones that all investment bankers use.

Q. Are these the sources of information upon which people buying and selling base their judgment?

A. Yes. The investor who wants to find the facts about a security can find them in those two services if it is any security that has any market at all.

Q. Will you proceed further, Mr. Montgomery, in giving your analysis of how you arrived at the opinions you have given us as to the values of these stocks?

A. In my opinion, an investor buying a bank stock, or in this case a bank and securities stock together, would look at the contribution of income from the bank and securities company and would look at the relative book values. But I, and I think the investor, would pay more attention to the dividend income, because, as I said earlier, the book value of a securities company fluctuates much more than the book value of a bank, which is relatively stable.

I find that the dividend income for about two and a half years preceding—I have given the figures, that 78 per cent came from the bank and 22 from the securities company. In the months immediately preceding the dates of purchase of this stock the [27] relative figures were 75 per cent



(Deposition of Thomas C. Montgomery.)

from the bank and 25 from the securities company. Therefore, I would say that in my opinion the investor was paying 75 per cent of his purchase for the bank stock and 25 per cent for the securities company, and that is the basis of my figures.

Q. Mr. Montgomery, if it had not been for the agreement of March 21, 1917, forbidding the separate sale of Chase National Bank stock and Chase Securities stock, what, in your opinion, would have been the values of Chase National Bank stock on the three days, March 3, 1930, April 8, 1930, and April 24, 1930?

Mr. Laikin: That is objected to on the ground that it poses a question the hypothesis of which is contrary to fact.

By Mr. Wilkins:

Q. You may proceed to answer that.

A. My opinion would still be the same. I would say that the value of Chase stock on those days would be the figures I have given.

Q. In your opinion, Mr. Montgomery, did the device accomplished by that agreement of March 21, 1917, forbidding the transfer of shares of these two corporations without an equal number of shares of the other, have the effect of increasing or diminishing the aggregate value of a unit consisting of the shares of both corporations?

A. I doubt if it would have any practical effect. There were times, possibly, when you would give more weight to the securities company and there were other times when you would give more



(Deposition of Thomas C. Montgomery.)

weight to the bank. As a matter of fact, from the dates of these purchases, in 1930, the relative value of the securities company went steadily down, and when the divorce finally took place in June of '34, the next day, when the stocks were traded [28] separately, the percentage of the total of the securities company was under five per cent, instead of twenty-five as, in my opinion, it was in the early part of 1930.

Q. I think, Mr. Montgomery, you misunderstood my question. My question is, whether this so-called locking device had the effect of increasing or diminishing the aggregate value of the two shares that were tied together; that is, whether the combination would be so advantageous that the value of both would be greater when locked together than separate, or whether the value of both would be less when locked together than the value of both separately. In your opinion, does the tying up of these two shares in one unit increase or diminish the aggregate value of both shares?

A. I don't think it generally speaking would increase or diminish the value.

Q. You were testifying a minute ago about the dividend yield on the two stocks over the years 1927 to 1929 inclusive, and the early part of 1930. You spoke of a split-up that occurred. Was that the only split-up that occurred between the beginning of 1927 and the end of 1930 between these two stocks?

(Deposition of Thomas C. Montgomery.)

A. That was the only what we call in the business a split-up. There were other mergers of Chase Bank where they took in other banks and trust companies and issued stock on those mergers, and after the dates of these purchases there was a big one which took place June 2, 1930, when the Equitable Trust Company and the Interstate Trust Company were merged in with Chase on the basis of four shares of Chase for five shares of Equitable and thirty-two one-hundredths Chase for each share of Interstate Trust Company.

Q. Then, in arriving at the dividend yields referred to for those years, did you take into consideration the effect of those [29] mergers and split-ups?

A. Well, when another bank was merged in, shares of Chase were issued to the stockholders of that bank pro rata on the assets that were taken in, so that I don't see that it had any great effect.

Q. How about the split-up that changed the ratio of shares of both Chase National Bank and Chase Securities Company? Did you take that into consideration with reference to the effect on the dividend yield?

A. After the split-up—go back; if a man had a hundred shares before the split-up and he got \$18 a year, after the split-up he had 500 shares and he got \$4 a share. He got, relatively, twenty dollars against eighteen. There was a slight increase.

Q. So that you took that into consideration in determining the yield that you testified with re-

(Deposition of Thomas C. Montgomery.)

spect to, and that particular split-up was the only split-up during that period?

A. There were some small stock dividends paid, but they did not amount to much.

Q. Did they affect the ratio of capital to earnings?

A. It would be simply an increase in the number of shares outstanding capitalizing the higher assets of the bank, which were increasing in that period, and the securities company.

Q. Did you take those into consideration, those stock dividends, in arriving at the ratio of dividends?

A. I don't see that it made any difference, because you got the same dividend in Chase Securities and the Chase Bank every time. The relative position of the investor wasn't changed.

When I spoke of the dividends per share, to carry it out, the stockholder who owned 100 shares of Chase Bank and Chase Securities was getting \$180 a year before the split-up and after- [30] wards he had 500 shares and got \$4 a share, so he got \$200 a year against \$180. I think that makes it a little clearer.

Mr. Wilkins: You may cross-examine.

Examination on Behalf of the Defendant

By Mr. Laikin:

Q. Mr. Montgomery, you have testified as to the relative book values of the shares of the bank and the securities affiliate. Do I understand that

(Deposition of Thomas C. Montgomery.)

you obtained information as to that from the services such as Moody's and Poor's?

A. That is right.

Q. Can you give us the editions from which you obtained the information?

A. The Moody's Manual is the 1931 Manual.

Q. And what did you find in Moody's 1931 edition?

A. I took the book value figures from that '31 edition, and the dividends.

Q. Did Moody's indicate a financial statement for the bank and a separate financial statement for the securities company?      A. Yes.

Q. On the previous years that you have testified to, did Moody's indicate that information?

A. I didn't go back of the '31 Manual. That gave the dividend rates, and the book values, for the two dates published previously, at the end of 1929 and 1930.

Q. Did any of the services that you refer to give the respective earnings of the bank and the securities company?

A. Yes. Net per share of the securities company was given in 1928 as \$1.69; in 1929, \$1.46; in 1930, \$1.07.

Q. And what were the dividends declared that year by the securities company? [31]

A. In '28 the securities company paid \$4 a share; in '29 the securities company paid \$3 on the old stock and then 25 cents on the new.

(Deposition of Thomas C. Montgomery.)

Q. Can you give us a page reference and volume reference for the source of your information as to the earnings of the securities company?

A. No, I didn't bother to take them down. It was the Manual for 1931, under "Chase Bank," where you will find them.

Q. Do you have the information of the earnings of the bank for the same years?

A. Moody's didn't publish it. This is taken from Standard and Poor's, and I am quoting exactly: "Indicated earnings years ended December 31 (as computed by Standard and Poor's Corporation based on net changes in capital funds plus common dividends declared): 1927, \$16.14; 1928, \$15.87; 1929, \$3.49"—that is on the new stock, of course—"1930, not given (not ascertainable due to merger); 1931"—if you want to go further—"a deficit of \$5.20; 1932, a deficit of \$2.07; 1933, a deficit of \$5.47; 1934, a deficit of \$4.44; 1935, net income, \$1.81; 1936, net income \$2.23."

Q. Do you have the page reference and volume reference of the source of this information?

A. No. I didn't bother to take them down, Mr. Laikin. They are right there in my office in Standard and Poor's.

Q. Do I understand that the information which you have just given us is the earnings record of the Chase Bank, not as submitted by the bank but as computed by publishers of the service?

A. Yes. The bank did not publish at that time an earnings statement. The service arrived at it

(Deposition of Thomas C. Montgomery.)

just as they stated there, [32] by taking net changes in capital funds plus common dividends declared.

Q. So that at best it is the estimate of publishers of the service as to what the earnings of the bank were?

A. Yes, it is their estimate, because the bank didn't report.

Q. And that estimate may or may not be correct?

A. It is the commonly accepted practice in business to check bank earnings that way.

Q. But it may or may not be bank earnings that the bank would report?

A. The bank didn't report any.

Q. You have testified to the fact that the securities company earnings for the year we have been discussing were \$1.69 for 1928, \$1.46 for '29, and so forth, and that the dividends declared for 1928 were \$4 and in 1929 were \$3. Do you know where the funds for the declaration of the dividend came from, inasmuch as they were over and above the earnings?

A. Presumably out of surplus.

Q. Have you checked that?

A. No, I have not.

Q. Have you examined the statements of the securities company to know where the money used to pay dividends came from?

A. No, I have not.

Q. Incidentally, have you ever examined the books and records of the Chase Securities Company?



(Deposition of Thomas C. Montgomery.)

A. In the old days, when they were active, I used to look at their statements, yes.

Q. You looked at their published statements?

A. Their published statements, yes. [33]

Q. But you have never examined the books and records of the company itself?

A. I had no reason to.

Q. Have you ever examined the books and records of the Chase National Bank?

A. I never had occasion to.

Q. Whatever information you have about these companies is from published statements or information which services have given you?

A. Yes, Mr. Laikin. That is what, in the securities business, we use to pass judgment on securities.

Q. When you seek to pass judgment on securities in the securities business, you try to arrive at what you would consider to be the most intelligent or most valid opinion or appraisal or guess, let's say, of value, is that correct?

A. Yes. The securities business isn't an exact science, and it never will be.

Q. In other words, valuation that you seek to ascertain, let us say, for investment purposes, would not be exact in the sense of solving a problem by algebra or mathematics?

A. Oh, no; far from it.

Q. Nor would it be exact as a chemical formula would be exact?



(Deposition of Thomas C. Montgomery.)

A. No. You make your estimate of value and your customer buys or sells, and then later you find out definitely whether you were right or wrong by the action of the market.

Q. In other words, only through experience can you prove your problem?

A. That's right.

Q. So that if you were required to prefix your valuation [34] with mathematical or formula exactitude, could the methods which you have testified to here be used?

A. Will you repeat that question, please?

Q. If the conclusion which you were seeking required mathematical certainty, could you use the method to which you have testified?

A. You couldn't get mathematical certainty. The method by which I arrived at my conclusion was taking the percentage of the value of the bank and the securities company of the total value, which I estimate at that period was 75 per cent for the bank and 25 per cent for the securities company.

Q. You state that you have used the published balance sheets of the two companies, the bank and the securities company, as a basis for some of your estimates. It is true, isn't it, that the actual value of a company's assets may not be revealed by a financial statement?

A. That is possible, but in the case of a bank or securities company you have a much closer method of value than you would with an industrial company, for instance.

(Deposition of Thomas C. Montgomery.)

Q. Well now, let's take the securities company. Did the published statement which you examined contain a list of all the securities owned by the company?

A. No, they simply classified them as so much in government bonds, so much in other bonds, so much in stocks, and the market values as of that date, and those reports were certified to by reliable auditors.

Q. Did the public statement carry it at market value or at book value?

A. The securities company custom, in all securities companies, is to carry them at market value?

[35]

Q. And did you ascertain whether or not the published statements correctly reflected market value?

A. No. Again, as we do in business, I would take the word of one of several high-grade firms of auditors who passed on it.

Q. But your opinions were based upon the opinions of others?

A. Upon the reports of others.

Q. Similarly, with respect to the published statement of the Chase National Bank, did you have occasion to determine whether or not the securities owned by them were properly evaluated?

A. No.

Q. You simply accepted the statements as being correct?

(Deposition of Thomas C. Montgomery.)

A. You have to do that. You can't go to the bank dealing in securities and say, "I have a man who wants to buy 100 shares of Chase. I would like to look at your books." They would laugh at you.

Q. Mr. Montgomery, the first purchase of a Chase unit here by this plaintiff was made on March 3, 1930. Did you have available to you statements indicating the bank's affairs and the securities company's affairs as of March 3, 1930?

A. No. The nearest report would be the one from which I gave you the figures, that is, December 31, '29.

Q. The second purchase made by this plaintiff was April 8, 1930. Did you have available to you a statement of the bank or the securities company for April 8, 1930?

A. No. Still the only published figures would be the end of the preceding year.

Q. Similarly, the last purchase was made on April 24, 1930. Did you have available to you information as of that date? [36]

A. No more than before. They didn't publish those statements except semi-annually or annually.

Q. You have testified to the fact that the book values of a securities company fluctuate frequently.

A. Yes.

Q. And considerably. Do I understand that it could fluctuate from week to week?

A. Yes; if the general market was moving up or down it could.

(Deposition of Thomas C. Montgomery.)

Q. And similarly, then, it could fluctuate from day to day if the general market was moving up or down?      A. Yes.

Q. Did you make any study of the market fluctuations between, say, January 1, 1930, and April 24, 1930, in order to correlate the information you had in the published statement with that obtaining on the dates of purchase?

A. I took only the two months in which the purchases were made. In the month of March, 1930, the high of the stock was 178 and the low was 158. In the month of April the high was 171 and the low was 164.

Q. But you made no attempt to correlate the values for the particular dates of the purchase?

A. No. It would be impossible, I would say.

Q. You say it would be impossible?

A. Impractical.

Q. Why would it be impractical?

A. Because you had no reports to go on except the reports issued at the end of the preceding year.

Q. Conceivably, if a statement had been issued on March 3, 1930, it would have varied or deviated from the statement published [37] as of the end of 1929?

A. It wouldn't have varied a great deal.

Q. But it might have varied?

A. It might have varied, yes.

Q. And similarly on April 8, 1930, the state-

(Deposition of Thomas C. Montgomery.)

ment published then might have varied from one published at the end of 1929?

A. It might have, but it wasn't published.

Q. And similarly for April 24, 1930?

A. Yes.

Q. So that actually the book values on the particular dates in question might have varied from the book value indicated by the last published statement?

A. They might have varied, but the securities business is a practical business and you take the last report you have and make your estimate and buy or sell accordingly.

Q. But if you were asked to make an estimate that would be mathematically certain, would that alter your judgment or would that alter the method you would use in attempting to arrive at such result?

A. My whole estimate here is based on the relative book values, the relative dividends paid, and I arrived in my opinion at what was the percentage to allot to the bank and the securities company, and that is a matter of opinion and it isn't mathematically exact.

Q. Then actually, of course, your estimates might be wrong to some slight degree as of the particular dates in question?      A. Oh, yes.

Q. In other words, another investment man using the same figures might arrive at a value that might be a dollar or two more or less than the value you have indicated? [38]

(Deposition of Thomas C. Montgomery.)

A. Yes. That is what makes the difference in markets, difference of opinion.

Q. The Chase National Bank was considered a very strong bank, was it not? A. Yes.

Q. And its reputation and good will were among the best in the United States, were they not?

A. Yes.

Q. To what extent, in your opinion, did such good will of the Chase National Bank carry over to the Chase Securities Corporation?

A. Oh, I say that went along in the same way. The securities corporation was regarded highly in business as an affiliate of the Chase Bank.

Q. Assuming that this particular securities corporation were affiliated with a bank of lesser importance than the Chase National Bank, would such lesser affiliation have a downward effect on the valuation of the securities company stock?

A. Well, one of the things you look at in securities is management, and you would rate Chase management higher than you would some others.

Q. In other words, the good will of the Chase National Bank contributed very definitely to the valuation of the Chase Securities stock?

A. The bank and the securities company, because you couldn't trade them separately.

Q. In view of the influence of the affiliation of the Chase bank that you have just testified to, would you alter your previous statement made on direct examination that if there had been no tie-up or no



(Deposition of Thomas C. Montgomery.)

restriction against separate sale, that the [39] respective values of the Chase bank stock and the securities stock would not have been affected?

Mr. Wilkins: Pardon me right there. I think perhaps I would like to have you eliminate the word "tie-up", because my question and the answer related to the agreement forbidding the sale separately, and had nothing to do with management or affiliation or anything else. It had only to do with the restriction on the sale.

By Mr. Laikin:

Q. Actually, Mr. Montgomery, there was a tie-up in management between the Chase Bank and the Chase Securities Company? A. Oh, yes.

Q. And that was generally known to the public?

A. Yes.

Q. They were generally considered more or less as one organization, is that a fact?

A. Well, they were and they weren't. A man in my line of business would have more contact with the securities company. A man in the banking business would have more contact with the bank.

Q. But the investor knew that he was buying securities of a closely tied-up and affiliated set of companies, isn't that so?

A. Yes, he knew that.

Q. Under those circumstances would you not say that the tie-up with the Chase National Bank contributed very definitely to the value that the prospective investor would place upon the securities company stock?



(Deposition of Thomas C. Montgomery.)

A. Oh, I suppose so; yes.

Q. Can you say to what extent?

A. No; that is impossible to appraise.

Q. But such a carryover of good will would be reflected in [40] the selling price of the unit?

A. Yes, I would say it would be.

Q. That an investor or purchaser would tend to ascribe greater value to the securities company's stock because of its tie-up with the bank?

A. I think the investor of that time was buying a unit and he was paying more attention to Chase Bank than he was to the securities company.

Q. In your appraisal of the respective values have you taken into account the good will which you have just testified to would make for a situation in which the investor would pay more attention to the bank than to the securities company?

A. The bank's book values and bank's earnings are much more stable than book values and earnings of a securities company, so an investor, I would say, would give much greater weight to the book value and earnings of a bank than he would of the securities company.

Q. You testified on direct examination that you personally would give greater weight to the earnings of the securities company.

A. I would give greater weight to the income derived from the bank than the securities company.

Q. Then that would be square with what, what an investor would do who would pay more attention to the bank's situation?

(Deposition of Thomas C. Montgomery.)

A. I am giving my opinion. The value of the bank was 75 per cent and the value of the securities company was 25 per cent, and I think an investor at that time, considering book value and earnings and good will, would estimate it at about that way.

Q. Mr. Montgomery, assume that you were authorized by some client to sell as, if and when, severed from each other, the rights [41] to receive separate certificates from the bank stock and the rights to receive separate securities for the securities company stock. Could you have found any customer willing to buy the bank stock separate from that of the securities company, or the securities company separate from that of the bank stock?

A. Of course that is theoretical, but I would say yes.

Q. Was there any market for such fractional ownership in the non-severable securities?

A. No.

Q. There was no such market? A. No.

Q. So that in this particular instance the practice does not support the theory?

A. No, there was no way to trade them separately.

Q. Well now, do investors generally buy securities for which there is no market?

A. No, generally not. But there was a market for the combined stock. After they were separated there was a market for the separate stocks.

Q. Do you know whether at the particular dates

(Deposition of Thomas C. Montgomery.)

we have been discussing, the spring of 1930, the Chase National Bank was involved with the Fox Theaters enterprises?      A. Yes.

Q. And do you know how much money the Chase National Bank had invested in these enterprises?

A. I don't remember now. I did at the time.

Q. It was a substantial sum, was it not?

A. Yes.

Q. Is \$75,000,000 about right?

A. I don't remember. [42]

Q. Do you know how that loan was carried on the books of the Chase Bank?      A. No.

Q. Then you don't know how that substantial item was reflected in the published statements of the bank, do you?

A. No. It would be carried in the loan account.

Q. If it was carried in the loan account at face, that would bring about one valuation of the assets of the bank. If it were carried at less than face, it would bring about another, would it not?

A. Yes.

Q. You don't know, of course, which way it was carried?

A. No. As a matter of fact, it was charged down very considerably in the years afterward when, as I testified earlier, the Chase Bank showed a deficit.

Q. That was after these purchases had been made?

A. As that stock depreciated they charged it

(Deposition of Thomas C. Montgomery.)

down. It is the practice of a bank to charge an asset down when it diminishes.

Q. Similarly, do you know of any other large loans that the Chase National Bank had that were very shaky at that time?

A. No, I don't. There was conversation around the street about this Fox situation.

Q. And if there were such large loans, and if such large loans were actually carried at book value and so reflected in the published statements, and these loans were relatively valueless, that would affect the actual value of the Chase Bank stock, would it not?

A. Well, in the size of the Chase it might make a little difference, but as a matter of fact, at the time of these purchases that Fox Film situation looked fairly good [43]

Q. But if the statements did not reflect the actual value of the loans at the time, it would make some difference in the value of the bank stock?

A. It would make some difference, but I don't know how anybody in the investment business is going to find it out. You buy or sell the stock on the figures you get and on your judgment.

Q. In other words, unless you had the inside information you could not make an actual correct valuation of the Chase Bank stock, is that right?

A. You can make an approximate valuation, as you can on any bank stock, because any bank may have some sour loans, and most of them do, from time to time.

(Deposition of Thomas C. Montgomery.)

Q. Well now, in order to arrive at a more accurate valuation of the Chase Bank stock, I suppose you could appraise all of its assets and determine what the bank owes, and arrive at a difference in that way, isn't that so?

A. You are getting down to a fine point, Mr. Laikin, and it isn't done in the securities business.

Q. But that would be one method, assuming it were practicable?

A. If the bank would let you do that, which they won't.

Q. Then assuming in a situation like that of the Chase Bank that you were given permission to do that and you actually did make such an appraisal, and the stock was being sold on the market, you would still have to evaluate the good will of the bank, which may tend to change the market selling price as distinguished from the actual value of the stock, isn't that so?

A. Repeat that question again, please.

(The reporter read the pending question.)

A. Well, the good will, which means in the case of a bank [44] respect for its position in the business and its management, always enters into the valuation.

Q. And how would you evaluate such good will, then?

A. You can't put it in dollars and cents.

Q. All of these factors which we have discussed would have an effect upon the relative valuation of the bank stock and the securities stock when they were being sold as one unit, would they not?

(Deposition of Thomas C. Montgomery.)

A. They are bound to enter into it, and the investor would have to make a rough guess as to what he thought they were worth, but if he was going to buy the stock he would have to pay the market price for it and get both of them. They were on the open market and the investor had his choice and he could buy it or he could refuse to buy it.

Q. He would buy it as a unit, and he wouldn't be concerned as to what the respective value of that stock was of each unit?

A. He might or might not. Some would and some wouldn't. Some take a great deal of care with which they go into a situation.

Q. Incidentally, was it not about these exact dates that the Chase National Bank and other creditors of the Fox Film and Fox Theaters Company forced William Fox to sell his controlling interest in these companies? Do you know that?

A. I don't remember.

Q. Do you know whether or not the Chase National Bank advanced sums to the securities company to enable the securities company to pay the dividends it did?

A. I don't know, but I doubt that.

Q. You have never investigated that problem?

A. No. The securities company may have borrowed money from [45] the bank at times as all securities companies do, to carry some of its underwritings, but they had plenty of assets of their own.



(Deposition of Thomas C. Montgomery.)

Q. Where do you get the information from that the securities company had plenty of assets of its own?

A. From its statements in the Manual.

Q. Do you know to what extent the securities company owned securities that were being under-written by the Chase group?

A. No, that wasn't broken down.

Q. Do you know to what extent the securities company owned so-called "cats" and "dogs" that the Chase Bank might have sloughed off on them?

A. I wouldn't say—no, I don't know to what extent. I would say that that is a question that is impossible to tell.

Q. Do you know how much of the earnings of the Chase National Bank were attributable to its dealings with the securities company?

A. No.

Q. Or vice versa, how much of the earnings of the securities company were attributable to its dealings with the bank?

A. No. There is no report that would give you that.

Q. And would not all of this information have some bearing upon the relative values of the two securities?

A. It would if you could get it, but you couldn't get it so in buying and selling Chase stock at that period I will say again that you simply make as near an estimate as you could in a practical manner.

Q. In other words, what you were trying to do



(Deposition of Thomas C. Montgomery.)

for us this morning is giving us your very best and most intelligent guess or opinion as to what the relative values of these securities were?

A. I am giving you my most intelligent opinion as to what [46] they were at that time.

Mr. Laikin: That is all.

Further Examination on Behalf of the Plaintiff  
By Mr. Wilkins:

Q. Mr. Montgomery, in actual practice, in making or measuring markets for securities, does the market give the exact effect of the values of such loans as that of the Fox Film loan, which you were just discussing on cross-examination?

A. No, it couldn't.

Q. In arriving at the opinion which you gave on your direct examination, did you give effect to the earnings or deficits of both companies as to which you testified on cross-examination?

A. Yes, I did, with the securities company. It paid dividends in 1930 and paid 50 cents in 1931 and nothing thereafter.

Q. Can you say what part mathematical certainty plays in the creation of market values of securities traded in those markets?

A. It doesn't play any part.

Mr. Wilkins: Your witness.

Mr. Laikin: I don't think I have any further questions.

THOMAS C. MONTGOMERY

[47]

## CERTIFICATE OF NOTARY PUBLIC

I, Franklin A. Steinko, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the action.

[Seal]

FRANKLIN A. STEINKO

Notary Public in and for the  
District of Columbia

My Commission Expires January 31, 1946.

[Endorsed]: Filed June 30, 1943. [48]

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[Title of District Court and Cause.]FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above-entitled case came regularly on for trial on June 30, 1943, before the above-entitled Court, the Honorable Louis E. Goodman presiding, the plaintiff appearing by its attorney Walter Slack, the defendant appearing by Frank J. Hennessy, United States Attorney for the Northern District of California, represented by Esther B. Phillips,

Assistant United States Attorney, and a Stipulation of Facts having been filed and the deposition of one witness having been received in evidence, and the cause having been argued and submitted, the Court now makes the following [49]

## FINDINGS OF FACT

### I.

The Court refers to and incorporates herein as his findings the facts stipulated and shown in the Stipulation of Facts filed by the parties.

### II.

The Court finds that plaintiff's original investment made in 1930 in the Chase National Bank and its affiliate, Chase Securities Corporation, was a single investment; and that in making said original investment on March 3, 1930, plaintiff did not then allocate any portion of the original cost to the shares of stock of the Chase National Bank and a portion to the shares of stock of Chase Securities Corporation.

### III.

The court finds that it is neither reasonable nor practicable to allocate to each stock a portion of the amount of the original investment of the plaintiff.

From the foregoing facts the Court renders the following

CONCLUSIONS OF LAW

(1) That no loss is allowable on the sale of plaintiff's stock in Chase National Bank during the year 1936 until the whole original transaction is closed by sale of the stock of the affiliate corporation, Amerex Holding Corporation, formerly Chase Securities Corporation.

(2) That defendant is entitled to judgment in his favor, with costs as may be taxed.

Dated December 13, 1943.

(Receipt of Service.)

LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed Dec. 13, 1943. [50]

In the Southern Division of the United States District Court for the Northern District of California

No. 22309-W

SPRECKELS - ROSEKRANS INVESTMENT  
COMPANY, a corporation,

Plaintiff,

vs.

JOHN V. LEWIS, former Collector of Internal  
Revenue of the United States for the First District of California,

Defendant.

### JUDGMENT

The above entitled case having come on regularly for trial on June 30, 1943, before the above entitled Court, the plaintiff appearing by its attorney Walter Slack, the defendant appearing by Frank J. Hennessy, United States Attorney for the Northern District of California, represented by Esther B. Phillips, and evidence, oral and written having been received, and the cause having been argued and submitted, and the Court having rendered his findings of fact and conclusions of law, it is hereby

Ordered, Adjudged and Decreed that the plaintiff take nothing by the complaint, and that the defendant recover its costs [51] in the sum of \$ , the amount to be taxed under the rules of Court and inserted herein by the Clerk.

Dated December 18, 1943.

LOUIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed Dec. 18, 1943. [52]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given That Spreckels-Rosekrans Investment Company, a corporation, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on December 18, 1943.

WALTER SLACK,  
Attorney for Appellant.  
Address: 433 California  
Street, San Francisco 4,  
California.

[Endorsed]: Filed Mar. 7, 1944. [53]

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[Title of District Court and Cause.]

### STATEMENT OF POINTS

This is an action for the refund of income taxes overpaid by plaintiff for the calendar year 1936 by reason of the failure to allow a deduction for a loss sustained on the sale of shares of stock of

the Chase National Bank. The defendant had judgment which was entered on December 18, 1943. Plaintiff, having this day taken an appeal from said judgment and having filed with the Clerk of the above entitled Court a Designation of Contents of Record on Appeal, herewith states the points upon which it intends to rely upon said appeal:

1. The plaintiff having made purchases of Chase National Bank stock and Chase Securities Company stock as units and said units having thereafter been dissolved and the plaintiff having [54] received upon such dissolution separate certificates representing the Bank stock and the Securities stock, contends that it is entitled to apportion the unit cost between the constituent stocks for the purpose of determining a deductible loss on the sale of the Bank stock prior to a sale of the Securities stock.

2. Plaintiff contends that such apportionment must be made either (a) on the basis of the respective values of the constituent stocks at the time of purchase or (b) upon the basis of the respective values of the constituent stocks at the time of the dissolution of the units.

3. Plaintiff further contends that upon the stipulated facts and the uncontradicted evidence, it was entitled to a judgment for income taxes overpaid for the year 1936 by reason of the failure to allow as a deduction the loss on the sale of said Chase National Bank stock.



Dated: March 7, 1944.

WALTER SLACK,

Attorney for Appellant.

Receipt of a copy of the within Statement of Points this 7th day of March, 1944, is hereby admitted.

FRANK J. HENNESSY,

U. S. Attorney Per T. S.

Attorney for Appellee.

[Endorsed]: Filed Mar. 7, 1944. [55]

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[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL

The plaintiff above named, having this day given Notice of Appeal from the final judgment entered in the above entitled action on December 18, 1943, designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in this action:

1. Complaint to recover income taxes illegally collected (omitting Exhibit "A" attached to the complaint which is duplicated as Exhibit "E" attached to the Stipulation of Facts).

2. Answer.

3. Findings of Fact and Conclusions of Law.

4. Judgment.

5. Stipulation of Facts with all Exhibits referred to therein. [56]

6. Testimony of Thomas C. Montgomery contained in his deposition.

7. Notice of Appeal.

8. This Designation of Contents of Record on Appeal.

9. Statement of Points.

Dated: March 7, 1944.

WALTER SLACK,

Attorney for Appellant.

Receipt of a copy of the within Designation of Contents of Record on Appeal this 7th day of March, 1944, is hereby admitted.

FRANK J. HENNESSY,

U. S. Attorney Per T. S.

Attorney for Appellee.

[Endorsed]: Filed Mar. 7, 1944. [57]

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[Title of District Court and Cause.]

**ORDER DIRECTING CLERK TO TRANSMIT  
ORIGINAL EXHIBITS FOR USE ON APPEAL**

Pursuant to the attached Stipulation and good cause therefor appearing, the Clerk of this Court is authorized and directed to transmit to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, as a part of the record upon Plain- [58] tiff's appeal from judgment heretofore entered in the above entitled action, Exhibits A, B, C, D, E and F, referred to and described in the Stipulation of Facts upon file in the above en-

titled action, which said exhibits were heretofore admitted in evidence upon the trial of said action.

Dated: April 3, 1944.

LOUIS E. GOODMAN,

United States District Judge.

[59]

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[Title of District Court and Cause.]

STIPULATION FOR ORDER AUTHORIZING  
TRANSMISSION OF ORIGINAL EX-  
HIBITS FOR USE ON APPEAL

It Is Hereby Stipulated by and between the undersigned, counsel for the above named parties, that the above entitled Court may make an order authorizing the Clerk of said Court to transmit [60] to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, for use upon Plaintiff's appeal in the above entitled action, original Exhibits A, B, C, D, E and F, referred to in the Stipulation of Facts on file in the above entitled action and heretofore admitted as exhibits upon the trial of said action.

Dated: March 30, 1944.

WALTER SLACK,

Attorney for Plaintiff.

FRANK J. HENNESSY,

United States Attorney.

By ESTHER B. PHILLIPS,

Assistant U. S. Attorney,

Attorney for Defendant.

[Endorsed]: Filed Apr. 3, 1944. [61]

District Court of the United States  
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 61 pages, numbered from 1 to 61, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Spreckels-Rosenkrans Investment Company, a Corp., Plaintiff, vs. John V. Lewis, former Collector of Internal Revenue of the United States for the First District of California, Defendant. No. 22309-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Eight dollars and no cents (\$8.00) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 12th day of April A. D. 1944.

[Seal]

C. W. CALBREATH,  
Clerk.

WM. J. CROSBY,  
Deputy Clerk. [62]

[Endorsed]: No. 10739. United States Circuit Court of Appeals for the Ninth Circuit. Spreckels-Rosekrans Investment Company, a Corporation, Appellant, vs. John V. Lewis, former Collector of Internal Revenue, of the United States for the First District of California, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed April 13, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals  
For the Ninth Circuit

No. 10739

SPRECKELS - ROSEKRANS INVESTMENT  
COMPANY,

Appellant,

vs.

JOHN V. LEWIS, former Collector of Internal  
Revenue of the United States for the First  
District of California,

Respondent.

STATEMENT OF POINTS UPON WHICH AP-  
PELLANT INTENDS TO RELY UNDER  
RULE 19 AND DESIGNATION OF THE  
PARTS OF THE RECORD TO BE  
PRINTED

Appellant hereby refers to and formally adopts the Statement of Points filed with the Clerk of the United States District Court for the Northern District of California, Southern Division, in the above-entitled case therein pending.

Appellant designates as the parts of the record which it thinks necessary for the consideration of the above appeal the entire typewritten transcript of record certified by the Clerk of the Southern District and on file in the above-entitled appeal, together with original Exhibits C and E transmitted by said Clerk pursuant to the order of the above-mentioned District Court.



Dated: April 14, 1944.

WALTER SLACK,  
Attorney for Appellant.

Receipt of a copy of the foregoing Statement of Points Upon Which Appellant Intends to Rely Under Rule 19 and Designation of the Parts of the Record to be Printed this 14th day of April, 1944, is hereby admitted.

FRANK J. HENNESSY,  
Per T. S.  
U. S. Attorney, Attorney for  
Appellee.

[Endorsed]: Filed April 14, 1944. Paul P.  
O'Brien, Clerk.

